



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 29 2008

CERTIFIED MAIL 7007 0710 0004 9555 4981
RETURN RECEIPT REQUESTED

Mr. J. C. Swofford
Roseclare Oil Company, LLC
1500 South 25th Street
Terre Haute, Indiana 47803

Re: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04-2008-1016(b)

Dear Mr. Swofford:

Enclosed is a copy of the Consent Agreement and Final Order (CA/FO) in this matter that has been filed with the Regional Hearing Clerk and served on the parties as required by 40 C.F.R. §22.6. This CA/FO is effective immediately. Please make note of the provisions under "PENALTY AND INJUNCTIVE RELIEF" with respect to compliance actions and stipulated penalties.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns please contact Mr. Randy Vaughn, UIC Enforcement Officer, at (404) 562-9793.

Sincerely,

A handwritten signature in black ink that reads "James D. Giattina".

James D. Giattina
Director
Water Management Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

Roseclare Oil Company, LLC
1500 South 25th Street
Terre Haute, Indiana 47803

Respondent

Consent Agreement
and
Final Order

Docket No. SDWA-04-2008-1016(b)

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CONSENT AGREEMENT

1. Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice" or "Part 22"), specifically Subpart I, published at 64 Fed. Reg. 40138 (July 23, 1999) and the delegated authority of the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Complainant") under Part C of the Safe Drinking Water Act ("SDWA" or "the Act"), 42 U.S.C. § 1421, et seq., the EPA, as Complainant, hereby enters into the following Consent Agreement and Final Order ("CA/FO") with Roseclare Oil Company, LLC ("Respondent").

2. Section 1450 of the SDWA authorizes the Administrator to prescribe such regulations as are necessary or appropriate to carry out his functions under the SDWA. These regulations are found at 40 CFR Parts 124, 144, 146, 147, and 148, and set forth requirements for the Underground Injection Control (UIC) program promulgated under Part C of the SDWA, 42 U.S.C. § 300h, et seq.

3. Injection well owners and operators are required to comply with the UIC program requirements. The UIC program for the Commonwealth of Kentucky, including all Indian lands, is administered by EPA. See 40 CFR § 147.901(a).

ALLEGATIONS

The parties hereby stipulate and find as follows:

4. Respondent is a limited liability corporation doing business in the Commonwealth of Kentucky and is incorporated in the State of Indiana.

5. Respondent is a "person" as that term is defined in Section 1401(12) of the SDWA, 42 U.S.C. Section 300f(12) and 40 CFR § 144.3.

6. Respondent owns and/or operates the following enhanced recovery injection well ("subject well"):

<u>EPA ID No.</u>	<u>Lease</u>	<u>Well No.</u>	<u>Status</u>
KYS2250212	Highland Creek Coal Co.	1	Active

7. This well, located in Union County, Kentucky, constitutes a "facility" as that term is defined in 40 CFR § 144.3.

8. Respondent's injection well was in existence on June 25, 1984, the effective date of the UIC program in Kentucky as implemented by EPA, and is, therefore, authorized by rule, as that term is defined in 40 CFR § 144.21(a).

9. During the week of December 11 – 13, 2007, EPA inspected Respondent's injection well.

10. 40 CFR §144.28(f)(2) requires that, the owner or operator of a Class II injection well authorized by rule shall establish and maintain mechanical integrity until the well is properly plugged in accordance with an approved plugging and abandonment plan.

11. During the aforementioned inspection, Respondent's subject injection well was found to have been mechanically altered. The subject well contained a device which would cause its annulus to be bypassed during a mechanical integrity test (MIT), thereby resulting in a falsified MIT result.

12. The mechanical alteration to the subject well rendered it incapable of passing a MIT.

13. Therefore the subject well lacked mechanical integrity subsequent to the mechanical alteration.

14. Respondent is in violation of 40 CFR §144.28(f)(2) for failure to establish and maintain mechanical integrity of the subject injection well until the well was properly plugged in accordance with an approved plugging and abandonment plan.

15. On February 29, 2008, EPA issued a Notice of Violation and Notice of Opportunity to Show for the subject well, alleging Respondent to be in violation of the SDWA and its implementing regulations.

STIPULATIONS AND FINDINGS

16. Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the facts and findings of violations as alleged. Respondent waives any right to a hearing and waives any right to appeal a final order in this matter, and consents to the issuance of a final order without further adjudication.

17. Complainant and Respondent have conferred for the purpose of settlement, pursuant to 40 CFR § 22.18, and desire to resolve this matter and settle the violations described herein without resort to a formal hearing. Therefore, without the taking of any evidence or testimony, the making of an argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this CA/FO will simultaneously commence and conclude this matter.

PENALTY AND INJUNCTIVE RELIEF

Based upon the foregoing Stipulations and Findings, the parties hereby agree and consent to entry of the following Order:

18. Respondent shall pay a civil penalty of nine thousand, eight hundred and eighteen dollars (\$9,818) in accordance with the terms set forth below:

- a. Respondent shall pay four thousand, nine hundred and nine dollars (\$4,909) within thirty (30) days of Respondent's receipt of a fully executed copy of this Order.
- b. Respondent shall pay the remaining four thousand, nine hundred and nine dollars (\$4,909) within six months after the initial payment.

19. Pursuant to Section 1423(c)(7) of the Act, 42 U.S.C. § 300h-2(c)(7), failure by Respondent to pay the penalty assessed by this CA/FO in full by its due date may subject Respondent to a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date the Order is effective). In such an action, the validity, amount and appropriateness of the penalty shall not be subject to review.

20. Pursuant to 40 CFR Part 13 and 31 U.S.C. § 3717, et seq., if EPA does not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of fifteen dollars (\$15), with an additional delinquent notice charge of fifteen (\$15) for each subsequent thirty (30) day period. EPA will also assess on a monthly basis a six per cent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

21. Respondent shall make payment to EPA by sending a certified or cashier's check payable to the "Treasurer, United States of America" at the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

22. Respondent shall note the title and docket number of the case on the penalty payment certified or cashier's check. Respondent shall submit copies of the check to the following persons:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

Ms. Alfreda Freeman, Chief
Central Enforcement Section
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

23. An Administrative Order to Cease Injection, SDWA-04-2008-1251, was sent to Respondent on May 22, 2008. Respondent shall not resume injection into the subject well until internal and external mechanical integrity have been demonstrated to EPA's satisfaction.

24. Respondent shall, within twelve (12) months of receipt of a fully-executed copy of this Order, remediate and demonstrate internal and external mechanical integrity, as set forth in the applicable UIC regulations, or plug and abandon the subject well, in accordance with an EPA-approved plugging and abandonment plan.

25. Respondent shall provide to EPA, every ninety (90) days, beginning ninety (90) days from Respondent's receipt of a fully-executed copy of this CA/FO, a written report stating the progress of the remediation and demonstration of internal and external mechanical integrity, or plugging and abandonment of the subject wells. This report shall include the EPA ID number and the well name and ID number.

26. Respondent agrees to pay stipulated civil penalties for violation of the conditions set forth in Paragraphs 23 through 25 above, as follows:

For failure to comply with each condition described in Paragraphs 23 through 25 above, Respondent shall pay a stipulated civil penalty according to the following schedule:

- a. Three hundred dollars (\$300) for any portion of the first week (7 days) any failure continues; and
- b. Two hundred dollars (\$200) per day for each day after the first week (7 days) that the failure continues.

27. Stipulated penalties shall become due and payable no later than thirty (30) days after receipt of demand from EPA. Payment shall be in the form of a certified or cashier's check made payable to the "Treasurer of the United States of America," and sent to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

28. A copy of the check shall be sent to the Central Enforcement Section, Water Programs Enforcement Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303-8960. Respondent shall state the docket number of this CA/FO on the face of any such check. The stipulated civil penalties set forth above shall be in addition to any other remedies or sanctions which are or may be available to EPA.

GENERAL PROVISIONS

29. The provisions of this CA/FO shall be binding upon Respondent, and its officers, directors, agents, servants, employees, and successors or assigns. Notice of this CA/FO shall be given to any successors in interest prior to transfer of the ownership or operational control of the facility.

30. This CA/FO does not constitute a waiver, suspension, or modification of the requirements of Part C of the SDWA, 42 U.S.C. § 1421, et seq., or any regulations promulgated thereunder. This CA/FO is not, and shall not be interpreted to be, a permit for the injection of fluids under Section 1421 of the SDWA, 42 U.S.C. § 300h, nor shall it in any way relieve Respondent of any obligation imposed by any permit issued thereunder, or of Respondent's obligation to comply with any provision of the SDWA, its implementing regulations, or any other local, state or federal law. Nothing contained herein shall be construed to prevent or limit EPA's rights to obtain penalties or injunctive relief under Section 1423 of the SDWA or other federal statutes and regulations. Payment of the penalty agreed to in this CA/FO shall not in any way affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty agreed to in

this CA/FO resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated herein.

31. For the purposes of state and federal income taxation, Respondent shall not be entitled and agrees not to attempt to claim a deduction for any penalty payment made pursuant to this CA/FO. Any attempt to deduct any such penalty shall constitute a violation of this CA/FO.

32. If any event beyond the control of Respondent, its/their successors or assigns, occurs which causes or may cause a delay in the achievement of any requirement of this CA/FO, Respondent shall notify EPA orally within four (4) days of the time it has knowledge of the occurrence of such event. A written report of said event shall be submitted by certified mail to EPA within ten (10) days of the date Respondent received knowledge of the event. Said report shall describe the violation or failure, its cause and all attendant circumstances, and the measures taken or to be taken to prevent or minimize any such violation or failure and to comply with the pertinent requirements of this CA/FO as soon as possible, and the timetable by which those measures are proposed to be implemented.

33. The burden of proving that any violation or failure is caused by circumstances beyond the control of and without fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Financial, economic, or business conditions or changes in same, unanticipated or increased costs or expenses, or problems relating to reasonably foreseeable technological infeasibility associated with the implementation of actions called for by this CA/FO, shall not relieve Respondent of any obligation imposed under the terms of this CA/FO, nor from payment of any penalty set forth in this CA/FO. EPA will notify Respondent of its determination that certain circumstances are considered to be beyond Respondent's control and the extension of time, if any, for completion of the affected requirements. Respondent shall waive this right to any extension for failure to provide EPA with written notice as provided herein or for failure to provide adequate proof of the cause of the delay.

34. The parties acknowledge and agree that final approval by EPA of this CA/FO is subject to 40 CFR § 22.45(c)(4) which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

35. Each party shall bear its own costs and attorneys fees in connection with this action.

36. This CA/FO shall become effective upon the date that it is signed by the Regional Judicial Officer.

37. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind the Party he or she represents to this Agreement.

RESPONDENT

Date: 6/27/2008

J. C. Swofford
J. C. Swofford, Managing Member
Roseclare Oil Company, LLC

COMPLAINANT

Date: 8/21/08

James D. Giattina
James D. Giattina, Director
Water Management Division
EPA, Region 4

FINAL ORDER

Pursuant to the Consolidated Rules of Practice and the delegated authority of the Administrator under the SDWA, the above and foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is ordered to comply immediately with the terms of the Consent Agreement, which are fully incorporated into this Final Order.

U.S. ENVIRONMENTAL PROTECTION AGENCYDate: August 28, 2008

Susan S. Schub
Susan Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of Roseclare Oil Company, LLC, Docket No. SDWA-04-2008-1016(b), on the parties listed below in the manner indicated:

Randy Vaughn, UIC Enforcement Officer
EPA, Region 4

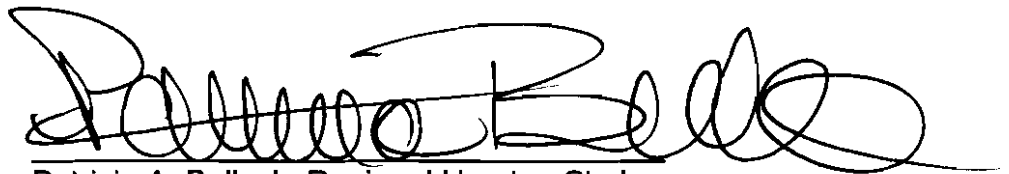
(Via EPA internal Mail)

Ms. Zylpha Pryor, Associate Regional Counsel
EPA, Region 4

(Via EPA internal Mail)

Mr. J. C. Swofford, Managing Member (Via Certified Mail - Return Receipt Requested)
Roseclare Oil Company, LLC
1500 South 25th Street
Terra Haute, IN 47803

Date: 8-29-08



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
(404) 562-9511